IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2007

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A. No.2724 of 2003

E.G.Ravi. .. Appellant/Petitioner

-vs-

Jayashree .. Respondent/Respondent

Appeal under section 19 (1) of the Family Court Act 1954 against the order passed on 30.10.1998 in H.M.O.P.No.174 of 1995 on the file of Family Court, Coimbatore.

For Appellant : Mr.M.S.Krishnan for
M/s. Sarvabhauman Associates

For Respondent : Mr.P.Duraisamy

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above appeal is directed against the order dated 30.10.1998 passed in H.M.O.p.No.174 of 1995 on the file of Family Court, Coimbatore wherein the petition filed by the petitioner/appellant herein to declare his marriage with the respondent-wife under section 12(1)(a) of the Hindu Marriage Act was dismissed.

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2. The facts, in brief, are as follows:-

The marriage of the petitioner husband with the respondent wife was solemnized on 28.7.1993 at Tirukoilur in accordance with Hindu rites and customs. The marriage was not consummated and the respondent wife herself revealed that she is unfit for sexual acts. The petitioner was prepared to take her to the doctor, but the respondent wife rejected the same. The petitioner had a house for rent and they lived separately in

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spite of which the respondent did not change her attitude. Originally the respondent wife volunteered for annulment of marriage. Even in the negotiation, it was agreed to file a joint petition for divorce. But, to the notice issued by the petitioner, the respondent sent a reply with false allegations.

3. In the counter, the respondent has stated that she is normal and she is not suffering from any ailment. She never expressed that she had aversion towards sexual relationship, nor she did volunteer for the annulment of marriage. The respondent was subjected to humiliation and mental cruelty at the hands of the petitioner and his mother. The petitioner husband alone suppressed the real facts.

4.1. On the side of petitioner husband, the petitioner was examined as P.W.1 and seven documents were marked. On the side of respondent wife, the respondent was examined as R.W.1 and 10 documents were marked. Besides, two court witnesses were examined through them three documents were marked.

4.2. On the basis of evidence on record, the Family Court dismissed the petition, which is being challenged in this appeal by the petitioner husband.

5. The point for determination is,

> "whether the petitioner husband is entitled to a decree declaring his marriage with the respondent wife as a nullity?"

6. Heard learned counsel appearing for both the sides and perused the records.

7. Admittedly, the marriage between the petitioner husband and the respondent wife took place on 28.7.1993 at Tirukoilur. The petitioner sought to declare the marriage as null and void on the ground that the respondent wife is sick and she had aversion towards sexual relationship and hence, the marriage was not consummated. The respondent has totally denied the allegations made by the petitioner husband. It is her case that she was subjected to mental cruelty.

8. The petitioner as P.W.1, in his chief examination, has reiterated his case, but in cross examination he has admitted that he did not inform anybody of her aversion towards sexual relationship. On the other hand, the respondent as R.W.1 has deposed that the marriage was consummated on the date of marriage itself. Though the petitioner claimed that without his knowledge, the respondent's parents took her from the matrimonial house, the respondent in her evidence has stated that

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it is the petitioner who asked her to stay with her parents since his mother was unwell. In her evidence, the respondent reiterated that she did not take any treatment and only the mother of the petitioner treated her cruelly.

9. Regarding non-consummation of marriage, what happened within the four walls with closed doors is known only to the petitioner husband and the respondent wife. Though it is contended on behalf of the petitioner husband that the respondent had not submitted herself to the marital relationship and on the ground of non-consummation of marriage, the petition is to be allowed, as already noticed, the petitioner husband in his cross examination has admitted that he did not inform anybody of the sexual aversion of the respondent wife whereas the respondent wife has categorically stated that the marriage got consummated on the date of marriage itself. That apart, Ex.C-1 certificate shows that the respondent was subjected to sexual relationship. Therefore, it cannot be stated that the petitioner husband has proved that the marriage was not consummated.

10. With respect to the alleged ground of impotency, C.W.1 Dr.Kuppulaxmi, who examined the respondent wife, has deposed that the respondent was physically fit for marital obligations. C.W.1 issued Ex.C-1 stating that the respondent was subjected to sexual relationship. C.W.2, a psychiatrist, examined the respondent and found that the respondent was a normal woman and fit for the marital life. The medical testimony being the evidence of experts would not leave the court from the obligation of satisfying itself on the point in issue beyond reasonable doubt and the relevance of a medical evidence, therefore, cannot be disputed. [vide: Sharda v. Dharmpal (2003) 4 SCC 493]. In this view of the matter, we are of the view that the petition has to file on the ground of impotency also. Probably, as observed by the Family Court, the respondent wife might not have matured enough at the time of marriage to perform her part of marital obligations, but that by itself would not be a ground for the petitioner husband to seek nullity of marriage.

11. Though the petitioner husband, in his evidence, reiterated the allegations made against the respondent wife, the Court must adopt pragmatic approach. The Court should keep in mind the ground realities and what is important is to decide whether the marriage can be saved and the husband and the wife can live together. Therefore, considering the evidence available on record as a whole, we are of the view that the trial Court, which had an opportunity to see the demeanour of the parties, has correctly come to the conclusion that there was consummation of marriage and the respondent wife is fit for marital life, relying on the medical evidence of C.Ws.1 and 2. Considering the overall

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circumstances of the case, We are of the considered opinion that the petitioner husband has not proved his case.

In the result, the appeal stands dismissed confirming the order of the Family court. No costs.

sasi.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer, Family Court,
Coimbatore.

2. The Record Keeper,
VR Section, High Court, Madras.

+ 1 cc to M/s. Sarvabhauuman Associates, Advocate SR 10260

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